



MAYOR AND COUNCIL AGENDA

NO. **15** DEPT.: Legal/ Community Planning and Development Services DATE: July 26, 2004

Contact: Deane Mellander, Planner III

ACTION: Discussion and Instruction on proposed zoning text amendment TXT2004-00209: to amend the Zoning Ordinance to allow an accessory swimming pool in a multi-family development to extend memberships to residents of single-family dwellings if originally approved by special exception; Miller, Miller and Canby, applicants.

ACTION STATUS:

FOR THE MEETING OF: 8/2/04

INTRODUCED

PUB. HEARING 7/19/04

INSTRUCTIONS 8/2/04

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 1

☐ CONSENT AGENDA

RECOMMENDATION: Discuss the public hearing testimony and provide instructions to staff.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other: Retail shoppers

Will continue to allow residents of the single-family dwellings in the Montrose Subdivision to be members of the Rollins Park Apartments swimming pool, as approved in the original special exception of August 4, 1961.

BACKGROUND: In 1961, the developers of the Rollins Park apartments obtained a special exception for a "private, non-commercial swimming pool". As part of the grant of the special exception, the developers were allowed to extend memberships to residents of the adjoining Montrose subdivision single-family homes. As noted in the applicant's letter requesting the text amendment, the definitions in the zoning ordinance were subsequently amended to revise the definitions applying to swimming pools. As a result, when a Use Permit application was made to renovate the pool, it was determined that memberships could no longer be extended to the single-family homes. The text amendment would amend the definition of "Swimming pool, accessory" to provide a new provision allowing such memberships if they had been approved originally by special exception.

Staff finds that the proposed text amendment is narrowly drawn, and would not affect any pools developed subsequent to the change in the definitions. It would retain the use of the pool by the Montrose neighborhood that they have benefited from for 40 years.

The Planning Commission reviewed this text amendment at its meeting on July 14, 2004 and recommended approval. Their recommendation is attached. There was no opposition to the text amendment at the public hearing.

PREPARED BY:

Deane E. Mellander
Deane Mellander, Planner III

7/26/04
Date

APPROVE:

Robert J. Spalding
Robert J. Spalding, AICP, Chief of Planning

7.26.04
Date

APPROVE:

Arthur D. Chambers
Arthur D. Chambers, AICP, CPDS Director

7/26/04
Date

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish, Acting City Manager

7/28/04
Date

LIST OF ATTACHMENTS:

1. Proposed text amendment.
2. Planning Commission recommendation.
3. Staff report to the Planning Commission.
4. Text amendment application.
5. Applicant's submittal.

ATTACHMENT TO APPLICATION
TO THE CITY OF ROCKVILLE FOR A
TEXT AMENDMENT TO THE CITY ZONING ORDINANCE

APPLICANT: MILLER, MILLER & CANBY, ATTORNEYS FOR
CONGRESSIONAL DEVELOPMENT CORPORATION

The Applicant proposes to add the following text to the City's Zoning Ordinance (underlining indicates text to be added):

Amend Section 25-1, "Definitions", the term "swimming pool, accessory" as follows:

Section 25-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

* * * *

Swimming pool, accessory means a swimming pool and/or wading pool, including buildings necessary or incidental thereto, conducted as an accessory use:

1. Maintained and operated by the management of any multi-family development in any multi-family zone or development.

a. A swimming pool, accessory, may provide memberships to persons residing in single-family dwellings if the pool was originally approved under a special exception for a private, non-commercial, community swimming pool for use by residents in a development containing both multi-family and single-family residences.



City of Rockville

MEMORANDUM

July 15, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Planning Commission Recommendation on Zoning Text Amendment TXT2004-00209, to amend the definition of "Swimming pool, accessory" to allow residents of the neighboring one-family detached dwellings to be members if originally approved by Special Exception.

At its meeting on July 14, 2004, the Planning Commission considered proposed Zoning Text Amendment No. TXT2004-00209. The applicant operates a swimming pool at the Rollins Park apartments. This pool was installed in 1961 at a time when such pools were defined as "private, non-commercial" community pools. In approving the special exception for the pool, the City Board of Appeals allowed residents of the surrounding one-family residential community to be members of the pool. The definitions for swimming pools were modified in the 1970's. The subject pool was effectively redefined as a "swimming pool, accessory," which permits such pools to be operated only for the benefit of the residents of the multi-family community. Because the provisions of the special exception were still in effect, the pool became a nonconforming use. When the applicants applied in 2003 for permits to renovate the pool, they were informed that they could not obtain a permit unless they came into conformance with the code, which meant they could no longer offer memberships to residents in one-family detached homes. The text amendment would add a provision to the pool definition that would allow the continuation of the membership program as originally approved.

The Commissioners were given a presentation by the staff, and heard testimony from the applicant and citizens.

The Commissioners fully support the proposed text amendment. It restores a neighborhood benefit the Montrose residents have long enjoyed. The amendment is narrowly drawn, and would only apply to cases where a special exception had been granted prior to the change in the definitions.

Page 2
July 15, 2004

The Planning Commission therefore recommends approval of the text amendment on a motion by Commissioner Ostell, seconded by Commissioner Britton, with 6 members voting in favor of the motion and one member absent.

DM

cc: Planning Commission



City of Rockville

MEMORANDUM

July 7, 2004

TO: City of Rockville Planning Commission

FROM: Deane Mellander, Planner III

VIA: Bob Spalding, AICP, Chief of Planning

SUBJECT: Proposed Zoning Text Amendment TXT2004-00209; To Amend the Definition of "Swimming Pool, Accessory"

BACKGROUND

The applicant operates a swimming pool at the Rollins Park apartments. This pool was installed in 1961 at a time when such pools were defined as "private, non-commercial" community pools. In approving the special exception for the pool, the City Board of Appeals allowed residents of the surrounding one-family residential community to be members of the pool. The definitions for swimming pools were modified in the 1970's. The subject pool was effectively redefined as a "swimming pool, accessory", which permits such pools to be operated only for the benefit of the residents of the multi-family community. Because the provisions of the special exception were still in effect, the pool became a nonconforming use. When the applicants applied in 2003 for permits to renovate the pool, they were informed that they could not obtain a permit unless they came into conformance with the code, which meant they could no longer offer memberships to residents in one-family detached homes. The text amendment would add a provision to the pool definition that would allow the continuation of the membership program as originally approved.

ANALYSIS

The statement of the applicant, Attachment C, sets forth their rationale for the amendment. In brief, the proposed amendment will allow an accessory swimming pool that had originally been allowed to offer memberships to residents in one-family detached homes under the special exception approval to continue to offer such memberships. Staff believes that the Rollins Park community is the only such situation, so the text amendment would not affect other areas of the City. The pool appears to have operated successfully as part of the community for 40 years.

Page 2
July 7, 2004

Staff therefore sees no adverse impact if the text amendment is approved. The limited scope of the text amendment will not adversely impact other areas of the City.

RECOMMENDATION

The staff finds that the proposed text amendment will be a benefit to the affected community and will not adversely affect other communities. Staff therefore recommends approval of proposed text amendment TXT2004-00209 as introduced.

/dem

Attachments: A. Proposed Text Amendment
B. Text Amendment Application
C. Applicant's Statement

APPLICATION TO THE CITY OF ROCKVILLE
FOR A TEXT AMENDMENT
TO THE ZONING AND PLANNING ORDINANCE

THIS APPLICATION MUST BE TYPEWRITTEN OR PRINTED AND NOTARIZED AND SUBMITTED IN DUPLICATE TO THE CITY CLERK FOR FILING. ALL ITEMS MUST BE COMPLETED AND THE FILING FEE MUST ACCOMPANY THIS APPLICATION.

MILLER, MILLER & CANBY, Attorneys for
CONGRESSIONAL DEVELOPMENT CORPORATION
Name of Applicant

200B Monroe Street
Rockville, MD 20850
Address

301-762-5212

Telephone Number

DO NOT WRITE IN THIS SPACE

Application No. TX104-00209

Filing Date 4/21/04

Filing Fee \$500

Public Hearing Date _____

Decision/Date _____

APPLICATION IS HEREBY MADE WITH THE ROCKVILLE MAYOR AND COUNCIL FOR APPROVAL OF A CHANGE IN THE TEXT OF THE ZONING AND PLANNING ORDINANCE OF ROCKVILLE, MARYLAND.

Page 1942 Article I Section 25-1

FROM: Which reads as follows:

"Definitions", the term
"swimming pool, accessory"

See Attachment to Application.

TO: Read as follows:

See Attachment to Application.

MILLER, MILLER & CANBY, attorneys for
CONGRESSIONAL DEVELOPMENT CORPORATION

By JODY KLINE
Signature of Applicant
Jody S. Kline

Subscribed and sworn before me this 21st day of April, 2004

My Commission Expires: 3/1/07

Wendy S. Thomas
Notary Public

LAW OFFICES

MILLER, MILLER & CANBY

CHARTERED

200-B MONROE STREET
ROCKVILLE, MARYLAND 20850(301) 762-5212
FAX (301) 762-6044JAMES R. MILLER, JR.*
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ELLEN S. WALKER
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JOSEPH P. SUNTUM
SUSAN W. CARTER
SUZANNE L. ROTBERT*
ROBERT E. GOUGH
MICHAEL G. CAMPBELL
SOO LEE-CHO
W. CHRISTOPHER ANDREWS
*(Of Counsel)

April 19, 2004

Mayor and City Council of Rockville
Rockville City Hall
111 Maryland Ave.
Rockville, MD 20850Re: Proposed Zoning Ordinance Text Amendment
Regarding "Swimming pool, accessory"

Dear Mayor Giammo and Members of the City Council:

Enclosed for your consideration is a draft Zoning Ordinance text amendment proposing to expand the definition of "swimming pool, accessory" offered by our client, Congressional Development Corporation, the owner and operator of the Rollins Park apartments.

The following facts are submitted to give some background for this proposal:

- 1, On August 5, 1961, the Rockville Board of Appeals granted a special exception (opinion attached) to our client for a "private, non-commercial" community swimming pool in conjunction with development of the Rollins Park apartments and single-family detached dwelling units in the subdivision known as "MONTROSE" also to be developed by our client. As noted in the Rockville Planning Commission's attached August 4, 1961 recommendation to the Board of Appeals, the persons eligible to use the community pool included "... the residents of the Rollins Park Apartments (approximately 440 units) and the Montrose Subdivision, which consists of single family residences in the R-75 zone (approximately 198 homes)."
2. At a subsequent date (that we have not yet been able to determine), the City amended its Zoning Ordinance to create use categories known as "Swimming pool, non-accessory" and "Swimming pool, accessory" (definitions attached) and to eliminate the category of "private swimming pool." At that point in time, our client's pool became a legal non-conforming use because although it was a "swimming pool, accessory" due to the fact that it was operated in a multi-family zone for the benefit

of residents of a multi-family community, nevertheless it also provided recreational benefits for residents of single family residences (per its 1961 approval).

3. In 2003, our client filed an application with the City to renovate and modernize its pool facilities. In preliminary meetings with City Planning Staff, it was determined that Congressional Development could file for a use permit for a "swimming pool, accessory" (rather than seek a new special exception for a "swimming pool, non-accessory", the standards for which our client's proposal could not meet). During the review of the use permit application, it was noted that because the Rollins Park facility was now a "swimming pool, accessory", it could not extend memberships to residents in single-family detached dwelling units (notwithstanding the fact that they had been members when the pool was originally established).
4. During the Planning Commission review of our client's use permit application, there seemed to be Commission support for an option that would allow retention of single-family resident members. The attached draft text amendment was determined to be the best way to accomplish this goal.

Congressional Development Corporation hopes that the City Council will introduce and then adopt the attached Zoning Ordinance Text Amendment so that Congressional can continue to provide recreational benefits to all of the residents of the community originally developed by this firm.

Thank you for your consideration of this proposal.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a bold, slightly stylized cursive font.

Jody S. Kline

JSK/cas

cc: Bob Spaulding
Cas Chasten
Dean Mellander
Sondra Block, Esq.
Ken Becker
Marilyn Feucht
Steve Crum
Allen Mushinsky

AUGUST 5, 1961

HERRINACK ENGINEERING CORP.
4915 DELRAY AVENUE
BETHESDA, MARYLAND

GENTLEMEN:

AT ITS MEETING OF AUGUST 5, 1961, THE CITY OF ROCKVILLE BOARD OF APPEALS CONSIDERED YOUR SPECIAL EXCEPTION APPLICATION S-49-61 WHICH REQUESTED THE CONSTRUCTION OF A PRIVATE SWIMMING POOL IN AN R-20 ZONE.

ON A MOTION, DULY MOVED, SECONDED AND UNANIMOUSLY PASSED BY THOSE MEMBERS PRESENT, THE BOARD OF APPEALS GRANTED THE SPECIAL EXCEPTION, WITH THE FOLLOWING CONDITIONS:

1. THAT INCREASED PARKING BE PROVIDED TO THE EXTENT OF 50 CARS.
2. THAT ADEQUATE SETBACK FROM HATHA TERRACE AND SCREENING BE PROVIDED ON THE TWO SIDES ADJUTTING RESIDENTIAL AREAS.
3. THAT THE POOL IS PLANNED AND OPERATED AS A PRIVATE, NON-COMMERCIAL, COMMUNITY SWIMMING POOL FOR THE USE OF THIS DEVELOPMENT.

BY DIRECTION OF THE CITY OF
ROCKVILLE BOARD OF APPEALS

RLW/HLF

RUSSELL L. MONTNEY
PLANNING DIRECTOR

CC: DEPT. OF PUBLIC WORKS
DEPT. OF LICENSES & INSPECTIONS
CITY CLERK

AUGUST 4, 1961

TO: BOARD OF APPEALS

FROM: ROCKVILLE PLANNING COMMISSION
MEMBERS PRESENT: MESSRS. MADDOX, PRESTON, ABBE, ROBERTS & TUCHMAN

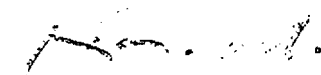
SUBJECT: RECOMMENDATION - SPECIAL EXCEPTION APPLICATION S-49-61 - HERRINACK
ENGINEERING CORP.

AT ITS MEETING OF AUGUST 3, 1961, THE PLANNING COMMISSION REVIEWED THE SUBJECT APPLICATION REQUESTING THE CONSTRUCTION OF A PRIVATE SWIMMING POOL IN AN R-20 ZONE. THE PROPOSED POOL IS INTENDED FOR THE USE OF THE RESIDENTS OF THE ROLLING PARK APARTMENTS (APPROXIMATELY 440 UNITS) AND THE MONTROSE SUBDIVISION, WHICH CONSISTS OF SINGLE FAMILY RESIDENCES IN THE R-75 ZONE (APPROXIMATELY 198 HOMES).

ON A MOTION, DULY MOVED, SECONDED AND UNANIMOUSLY PASSED, THE PLANNING COMMISSION RECOMMENDS THAT THE SPECIAL EXCEPTION BE GRANTED, WITH THE FOLLOWING CONDITIONS:

1. THAT INCREASED PARKING BE PROVIDED TO THE EXTENT OF 50 CARS.
2. THAT ADEQUATE SETBACK FROM MARTHA TERRACE AND SCREENING BE PROVIDED ON THE TWO SIDES ADJUTTING RESIDENTIAL AREAS.
3. THAT THE POOL IS PLANNED AND OPERATED AS A PRIVATE, NON-COMMERCIAL, COMMUNITY SWIMMING POOL FOR THE USE OF THIS DEVELOPMENT.

BY DIRECTION OF THE CITY OF
ROCKVILLE PLANNING COMMISSION


RUSSELL L. MONTNEY
DIRECTOR

RLY/MLF

Subdivision means the division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites, or other divisions of land or assemblage of land for the purpose, whether immediate or future, of sale or of building development. "Subdivision" includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or territory subdivided.

Subdivision, minor means any subdivision containing not more than three (3) lots fronting on an existing road, not involving any new road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with a provision or portion of the Plan or this chapter.

Swimming pool means a pool for swimming by human beings having adequate legal capacity and deck size.

Swimming pool, accessory means a swimming pool and/or wading pool, including buildings necessary or incidental thereto, conducted as an accessory use:

- (1) Maintained and operated by the management of any multifamily development in any multifamily zone or development; or
- (2) Maintained and operated by the management of a hotel or motel for the use of patrons thereof; or
- (3) Maintained and operated by any industry for exclusive use of employees of such industry; or
- (4) Maintained and operated in conjunction with a bona fide country club located on a site having at least fifty (50) acres for exclusive use of members of such club and their guests; or
- (5) Owned and maintained by an individual or group of less than five (5) individuals or families for the sole use of the owner and guest of the owner, without charge for admission, and not for the purpose of profit or in connection with any business operated for profit, located on a lot as an accessory use to a residence.

Swimming pool, legal capacity means the sum of the following:

- (1) One (1) person for each ten (10) square feet of water surface where the water depth is less than five (5) feet; and

- (2) One (1) person for each twenty-four (24) square feet of water surface where the water depth is five (5) feet or greater, excluding three hundred (300) square feet of such water surface which shall be required for each diving board or diving platform.

Swimming pool, minimum deck size legal capacity means twenty (20) square feet per person, exclusive of the pool proper, of pool apron, deck or other structure surrounding the pool proper multiplied by the number of persons constituting the legal capacity of the pool.

Swimming pool, nonaccessory means any swimming pool that is not an accessory swimming pool.

Tangible personal property includes any of the following:

- (1) Art object;
- (2) Audio-visual equipment, including a radio, television set, video disk machine, video cassette recorder, or stereo equipment;
- (3) Bicycle;
- (4) Camera;
- (5) Carpet or rug;
- (6) Computer equipment or typewriter;
- (7) Fine or historic china, crystal, glass, and porcelain;
- (8) Firearm;
- (9) Fur and leather goods;
- (10) Household appliance;
- (11) Jewelry or watch;
- (12) Musical instrument;
- (13) Office machine or equipment (except furniture or similar furnishings);
- (14) Optical equipment;
- (15) Tangible personal property pledged as collateral (pawned items);
- (16) Tool; and